

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CARL R. KELLEY and U.S. POSTAL SERVICE,
GENERAL MAIL FACILITY, Lakeland, FL

*Docket No. 01-1100; Submitted on the Record;
Issued May 14, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,
DAVID S. GERSON

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation effective May 5, 2000.

The Office accepted that appellant sustained a lumbar strain in the performance of duty on March 16, 1990.¹ By decision dated April 8, 1994, the Office determined that appellant's wage-earning capacity was represented by his actual earnings in a five-hour per day, light-duty position at the employing establishment.

In a letter dated March 30, 2000, the Office notified appellant that it proposed to terminate his compensation on the grounds that the medical evidence established that his employment-related condition had resolved. By decision dated May 5, 2000, the Office terminated compensation for wage loss and medical benefits. In a decision dated January 2, 2001, an Office hearing representative affirmed the termination decision.

The Board finds that the Office met its burden of proof to terminate compensation.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation. After it has been determined that an employee has disability causally related to his employment, the Office may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.²

In a report dated February 15, 2000, an attending physician, Dr. John Amann, a neurosurgeon, diagnosed degenerative disc disease with spondylolisthesis and segmental stenosis. Dr. Amann indicated that he had never received any records regarding appellant's 1990 injury and he was unable to answer questions regarding resolution of the lumbar strain. He noted

¹ Appellant alleged that on that date he was lifting sacks of mail.

² *Patricia A. Keller*, 45 ECAB 278 (1993).

that sprains and strains usually resolve within a few months, and if spondylolisthesis was documented prior to his work injury, then the work injury would work as an aggravation. Dr. Amann concluded that at this point the natural progression of the degenerative condition was a more likely explanation for appellant's pain than a work injury or motor vehicle accident.³

The Office referred medical records and a statement of accepted facts to Dr. Michael D. Slomka, an orthopedic surgeon. In a report dated March 20, 2000, Dr. Slomka provided a history and results on examination. He opined that the lumbar sprain had resolved, stating that "current objective findings include the degenerative change and spondylolisthesis which preexisted the 1990 incident and was in no way caused by that accident." Dr. Slomka indicated his agreement that the March 16, 1990 strain did aggravate the underlying spondylolisthesis, but he reiterated that "the sprain has resolved and that current symptoms are the result of the natural progression of the preexisting condition in the spine. There is no indication that any permanent aggravation of this preexisting condition resulted from the March 16, 1990 work injury."

The Board finds that the weight of the evidence indicated that the employment-related condition had resolved. Dr. Slomka provided an unequivocal opinion, based on a complete background, that appellant did not have a continuing employment-related condition. The Board accordingly finds that the Office met its burden of proof to terminate compensation as of May 5, 2000.

After termination or modification of benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to appellant. In order to prevail, appellant must establish by the weight of the reliable, probative and substantial evidence that he had an employment-related disability that continued after termination of compensation benefits.⁴

In this case, appellant submitted an additional report dated May 25, 2000 from Dr. Amann. He indicated that he had reviewed records from a prior treating physician, Dr. J. McCullough, an orthopedic surgeon, who had opined that appellant's work-related problems were permanent in nature.⁵ Dr. Amann reported that appellant had clearly stated that his lifting injuries at work were the cause of his trouble, and "since his symptoms have remained constant if not worsened over the years, the aggravation of preexisting conditions that he sustained in 1990 would be assumed to be permanent in nature." He also indicated that the Office was asking some "unanswerable" questions and he concluded that he could not make a statement within reasonable medical certainty that appellant's continuing restrictions or future medical treatment were "directly or exclusively related to the work injury."

³ Dr. Amann noted in his history that appellant had a nonemployment-related motor vehicle accident in June 1997.

⁴ *Talmadge Miller*, 47 ECAB 673, 679 (1996); *see also George Servetas*, 43 ECAB 424 (1992).

⁵ In a report dated May 29, 1991, Dr. McCullough opined that the March 16, 1990 work injury had permanently aggravated the spondylolisthesis, without providing additional explanation. A second opinion referral physician, Dr. Robert Pfaff, an orthopedic surgeon, stated in a December 22, 1992 report that the work-related aggravation had "largely subsided."

The Board finds that the May 25, 2000 report is of limited probative value to the issue presented. Dr. Amann stated that, since appellant's symptoms have been constant, the aggravation would be assumed to be permanent, without clearly explaining this statement. The Board has held that an opinion on causal relationship based solely on continuing symptoms after a work injury, without supporting rationale and explanation, is of diminished probative value.⁶ Moreover, Dr. Amann's February 15, 2000 report appeared to make a contrary assumption; that is, if the spondylolisthesis preexisted the work injury, then the most likely explanation for continuing pain would be the natural progression of the degenerative condition, not the work injury. Dr. Amann does not discuss his prior report, and he also concludes that he cannot provide an opinion with reasonable medical certainty. The Board accordingly finds that the May 25, 2000 report is of diminished probative value. Appellant did not submit a reasoned medical opinion, based on a complete background, with respect to a continuing condition after May 5, 2000 causally related to the March 16, 1990 injury.

The decisions of the Office of Workers' Compensation Programs dated January 2, 2001 and May 5, 2000 are affirmed.

Dated, Washington, DC
May 14, 2002

Alec J. Koromilas
Member

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

⁶ See *Cleopatra McDougal-Saddler*, 47 ECAB 480 (1996) (because the employee is symptomatic after an injury is not sufficient to establish causal relationship without supporting rationale).